

Description	9AM MICHAEL F. PHILLIPS, ET AL. vs. GOVERNMENT OF GUAM, ET AL., CV0304-23		
	WEDNESDAY, NOVEMBER 12, 2025 CONT. PRETRIAL CONFERENCE		
	JUDGE: EMI / CLERK: ABM		
Date	11/12/2025	Location	JDEMIFTR

Time	Speaker	Note
9:02:53 AM		PRESENT VIA ZOOM: Mike Phillips for Plaintiff Joseph Guthrie for Defendant
9:03:01 AM		CASE CALLED
9:03:13 AM	Ct	set for trial 12/1/25
9:03:46 AM		have motion for judgment pending...
9:04:05 AM		any issues with trial date?
9:04:10 AM	Phillips	possibility of gov accepting service ...
9:05:18 AM		more concern re government filing motions
9:05:58 AM		prefer ct rule on motion ...
9:06:13 AM	Guthrie	identified dispositive fact
9:06:34 AM		join Mr. Phillips and allow response ...
9:06:45 AM	Ct	inclined to move trial date
9:07:05 AM		CT WILL TAKE TRIAL DATES OFF
9:08:01 AM		MOTION HEARING - 1/9/2026 - 930AM
9:10:52 AM		end

FILED
SUPERIOR COURT
OF GUAM

2025 OCT 17 AM 10:08

CLERK OF COURT

BY: TR



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BEFORE THE SUPERIOR COURT OF GUAM

CIVIL CASE NO. CV-0304-23

MICHAEL F. PHILLIPS and the
LAW OFFICES OF PHILLIPS &
BORDALLO P.C.,
Plaintiffs

vs.

GOVERNMENT OF GUAM,
and does 1-10,

Defendants.

**MOTION AND
MEMORANDUM IN SUPPORT OF
MOTION FOR JUDGMENT ON
PLEADINGS**

(Government Claim in Contract for
Damages from Breach of Legal Services
Agreement)

(Plebiscite Appeal to Supreme Court)
Second Claim: USA v. Government of
Guam, et al (Defense of Chamorro Land
Trust Act)

MOTION

COMES NOW, Joseph A. Guthrie, Counsel for Defendants, and moves the
Court for judgment on the pleadings in the above captioned case, pursuant to Rule
12(c) and Rule 12(h)(2).

This Motion is supported by an accompanying Memorandum in Support of
Motion for Judgment on the Pleadings.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Rule 12(c) of the Guam Rules of Civil Procedure (GRCP) permits parties to
3 move for Judgement on the Pleadings if the motion does not delay trial. The above
4 captioned case is set for Trial on December 1, 2025. Today is October 10, 2025.

5 The Defendants in this case have already moved for dismissal of this case
6 under Rule 12(b)(6), GRCP. In a Decision and Order Denying Motion to Dismiss dated
7 January 28, 2025, the Court examined the four grounds for dismissal asserted by the
8 Defendants--sovereign immunity, equitable estoppel, procurement law, and
9 promissory estoppel and found them all wanting.
10

11 Motions for dismiss made under Rule 12(b) must be made before a responsive
12 pleading is due. "A motion making any of these defences shall be made before
13 pleading if a further pleading is permitted" Rule 12 (b), GRCP.

14 However, Rule 12 (c), GRCP provides, in relevant part:

15 (c) Motion for Judgment on the Pleadings. After the pleadings are
16 closed but within such time as not to delay the trial, any party may
move for judgment on the pleadings.

17 Moreover, Rule 12(h)(2) provides, in relevant part:

18 (2) A defense of failure to state a claim upon which relief may be
19 granted... by motion for judgment on the pleadings...

20 The upshot is that a Defendant may raise a defence of failure to state a claim
21 upon which relief can be granted via a Motion for Judgement on the Pleadings after
22 pleading has otherwise closed by the filing of an Answer or a court order setting a
23 deadline for the filing of motions. The only limitation on filing a Motion for Judgement
24 on the Pleadings is the proviso:
25

1 After the pleadings are closed but within such time as not to delay the trial,
2 any party may move for judgment on the pleadings.

3 Paragraph 11 of the Complaint states:

4 "On October 21, 2019, at approximately 5:40 p.m., Governor Leon
5 Guerrero entered into an oral agreement wherein Governor Leon
6 Guerrero offered and requested Attorney Phillips to take over as
7 Guam's attorney in the Davis case." (emphasis added)

8 Paragraph 94 of the Complaint states:

9 Plaintiffs adopt by reference, pursuant to Rule 10(c) of the Guam
10 Rules of Civil Procedure, Paragraphs 1 through 93 above. Matters
11 adopted would be the allegation of paragraph 11 that the
12 agreement concerning U.S.A. v. Government of Guam et. al was
13 oral. (emphasis added)

14 7GCA § 9A216 provides:

15 When Written Fee Agreements are required for Attorneys.

16 (a) In representing a client, an attorney shall have a
17 written fee agreement which is signed by the client if:

- 18 (1) The contemplated fee is in excess of \$500, or
19 (2) An appearance is required or reasonably
20 contemplated before any court or agency by the
21 attorney, or
22 (3) The fee is contingent. (emphasis added)

23 (b) Such fee agreements shall be in clear and concise
24 language and shall clearly spell out the general nature
25 of the work to be done by the attorney and the
financial obligation of the client to pay for such work.
In uncontested matters, it shall spell out the financial
obligations if the matter becomes contested. If the fee
is based on an hourly rate, the hourly rate shall be
stated.

(c) An attorney shall have his or her client sign such a fee
agreement within forty-eight (48) hours of the time the
attorney is retained unless that is impossible because
the client is outside of Guam or incarcerated or
otherwise unavailable, in which case a fee agreement

1 shall be signed at the earliest possible time.
2 (emphasis added)

3 (d) Within ninety (90) days of this section becoming law,
4 the Ethics Committee of the Guam Bar Association
5 shall publish various model fee agreements and make
6 the same available to Bar Association members for
7 use or modification, but use of such model forms shall
8 not be mandatory as long as the form used complies
9 with this section.

10 (e) In the absence of a required fee agreement with the
11 client, claims for attorney's fees incurred before a fee
12 agreement was signed shall be unenforceable.

13 (f) Any attorney who is representing clients without
14 written fee agreements on the effective date of this
15 section shall have sixty (60) days to obtain such
16 written fee agreements. (emphasis added)

17 (g) Nothing herein shall prevent the parties from
18 amending any fee agreement, nor shall it prevent an
19 attorney raising his or her hourly rates upon thirty (30)
20 days notice to the client if such right is reserved in the
21 agreement.

22 (h) An attorney may withdraw from representation of his
23 or her client when the court finds at a hearing after
24 notice to the client that such client has failed to meet
25 the financial obligations set out in the written fee
agreement. (emphasis added)

(i) Subsections (a), (b), (c), (e), (f), and (g) of this section
shall become effective ninety (90) days after this
section becomes law, and the remaining subsections
shall go into effect on the date this section becomes
law."

(j) No attorney may accept land as a fee for any legal
work without the prior approval of the Superior Court
and upon a finding by the Court that the fee
arrangement is fair, and that the worth of the land
used in calculating the amount of the fee is its fair
market value. No attorney may accept a mortgage on
real property to secure the payment of fees.

1 SOURCE: Added by P.L. 20-175:2 as GC 28065
2 (5/16/90). Formerly numbered Appendix A 7 GCA §
3 9216, renumbered by Compiler to § 9A216. NOTE:
4 Must be cross-referenced with the current Rules
5 Governing Admission to the Practice of Rules and/or
6 the current Rules for the Discipline of Attorneys to
7 determine whether it was repealed. See COMMENT
8 above.

9 When reviewing a motion to dismiss, a court should: (1) to the extent the
10 language permits, read the complaint in a manner most favourable to the plaintiff; (2)
11 accept non-conclusory allegations as true, and (3) make all reasonable inferences
12 possible in the plaintiff's favor. Wright & Miller, *Federal Practice and Procedure*, 5B
13 *Fed.Prac. & Proc.* § 1357 (3d ed)

14 Rule 12(h)(2) preserves the right to request dismissal for failure to state a claim
15 upon which relief can be granted by authorizing a motion for judgment on the
16 pleadings. The standard of review for Rule 12(c) and Rule 12(h)(2) motion adheres to
17 the standard governing Rule 12(6) motions to dismiss.

18 Guam has maintained the standard of review set forth in *Conley v. Gibson*, 355
19 U.S. 41, 45-46 for local civil matters instead of adopting *Twombly and Iqbal*. See *Lujan*
20 *v. J.L.H. Trust*, 2016 Guam 24 Para. 14. When ruling on a 12(b)(6) motion, the Court
21 should dismiss when "it appear[s] beyond doubt" that the plaintiff will be unable to
22 prove any set of facts to support his claim that might "entitle him to relief" *Id* at Para
23 12.

24 Until now, neither the Plaintiff or Defendant has mentioned 7GCA § 9A216.
25 Because the agreement allegedly entered into was oral, 7 GCA § 9A216 would apply,
(emphasis added) and claims for attorney's fees incurred before a fee agreement was

1 signed would be unenforceable.

2
3 Dated this 16th day of October, 2025.

4 **OFFICE OF THE ATTORNEY GENERAL**
Douglas B. Moylan, Attorney General

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6 By: 
7 **JOSEPH A. GUTHRIE**
Chief Deputy Attorney General

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FILED
SUPERIOR COURT
OF GUAM

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CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM

BY: 

MICHAEL F. PHILLIPS AND THE LAW
OFFICES OF PHILLIPS & BORDALLO,
P.C.,

Plaintiffs,

vs.

GOVERNMENT OF GUAM, and DOES 1-
10,

Defendants.

CIVIL CASE NO. CV0304-23

ORDER RE DEFENDANT
GOVERNMENT OF GUAM'S MOTION
IN LIMINE

This Order addresses Defendant Government of Guam's August 5, 2025 Motion in Limine. First, the Government moves to exclude Plaintiffs' Exhibit 7, claiming that it was not produced. Plaintiffs' Opposition does not clarify whether it was produced during discovery. The Court will exclude any document not timely produced.

Second, the Government seeks to exclude Plaintiffs' Exhibit 9, asserting it violates Guam Rule of Evidence 408 relative to offers to compromise. On the other hand, Plaintiffs claim that Exhibit 9 establishes that they exhausted their administrative remedies. Notably, the Government contests that Plaintiffs exhausted their administrative remedies. Answer ¶ 1 (July 18, 2023) (denying allegation No. 67). To the extent this issue remains contested at trial, the Court finds it premature to exclude this exhibit under Rule 408. See GRE 408 (allowing evidence of compromise efforts when offered for another purpose).

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SO ORDERED, 13 August 2025.



HON. ELYSE M. TRIARTE
Judge, Superior Court of Guam

Appearing Attorneys:

Michael F. Phillips, Esq., The Law Offices of Phillips & Bordallo, P.C., for Plaintiffs

**Jay Matthew Strader, Assistant Attorney General, Office of the Attorney General of Guam, for
Defendant Government of Guam**

SERVICE VIA EMAIL

I acknowledge that an electronic
copy of the original was e-mailed to:

Phillips Bordallo

Abi

Date 8/13/25 Time: 3:57pm

Scott E. Hermosilla
Deputy Clerk, Superior Court of Guam

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